Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

No. 77-1443

In the Supreme Court of the United States

OCTOBER TERM, 1977

EDGAR H. MELIA, PETITIONER

v.

JOSEPH A. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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The judgment of the court of appeals in this case was entered on December 21, 1977 (Pet. App.).[1] Petitioner did not seek rehearing in the court of appeals and did not obtain an extension of time within which to file a petition for certiorari. The time provided by 28 U.S.C. 2101(c) within which to file a petition for certiorari therefore expired on March 21, 1978. The petition was not filed until April 11, 1978. The time limit provided by Section 2101(c) is jurisdictional. *Department of Banking* v. *Pink*, 317 U.S. 264. It is therefore repectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

MAY 1978.

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[1]The judgment of the court of appeals was issued as mandate on January 12, 1978 (Pet. App. 8). The time within which to file a petition runs from the date of judgment, however, not from the date of the mandate.